

Appl. No.: 09/700,687
Amdt. dated September 24, 2004
Reply to Office action of August 10, 2004

REMARKS

In response to the final rejection mailed August 10, 2004, Applicants request favorable reconsideration by the Examiner in light of the accompanying new Declaration by J. Mengaud submitted herewith, the amendment to claim 1 and the accompanying remarks.

Claims 3 and 11-18 stand allowed. Claims 1, 2 and 4-10 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Hottinger in view of Mainzer. In this response, Claim 1 has been amended to incorporate the substance of dependent claim 2, which has been cancelled. Thus no new issues are presented, and entry of this amendment is clearly appropriate.

The Examiner has recognized the patentability of the subject matter of claims explicitly reciting strain I-1968 (Claims 3 and 11-18) over Hottinger in view of Mainzer, because the results disclosed in the first Declaration by J. Mengaud demonstrate that this strain exhibits acidification properties that are different from those of a *LacZ* deletion mutant of *L. bulgaricus*.

In the accompanying second Declaration by J. Mengaud, Mr. Mengaud describes comparison experiments between two *LacZ* non-sense *L. bulgaricus* mutants. In particular, the acidification properties of two *L. bulgaricus* strains obtained from different parent strains, both having a non-sense mutation in the *LacZ* gene, but at different locations, have been tested. The results show that both strains present exactly the same acidification properties, whatever the amount of glucose added.

The new data presented in the enclosed Declaration should convince the Examiner that the particular features of the I-1968 strain are indeed a consequence of the presence of a non-sense mutation in the sequence encoding β -galactosidase, rather than a deletion of part of the gene, the position of this mutation not being of critical importance. Therefore, the distinguishing features of the I-1968 strain can be extrapolated to virtually any *LacZ* non-sense *bulgaricus* mutant. For this reason, the subject matter of independent Claim 1 should also be patentable over the cited prior art.

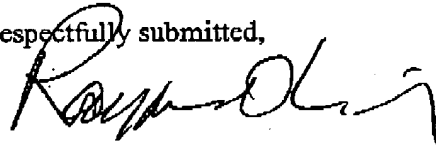
Likewise, Claims 2 and 4-10, which are dependent directly or indirectly upon Claim 1, should also be allowable over the prior art.

Accordingly, Applicants request favorable reconsideration by the Examiner and formal notification of the allowability of all claims as now presented.

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It is not believed that extensions of time or fees for net addition of claims are required, beyond those that may otherwise be provided for in documents accompanying this paper. However, in the event that additional extensions of time are necessary to allow consideration of this paper, such extensions are hereby petitioned under 37 CFR § 1.136(a), and any fee required therefore (including fees for net addition of claims) is hereby authorized to be charged to Deposit Account No. 16-0605.

Respectfully submitted,

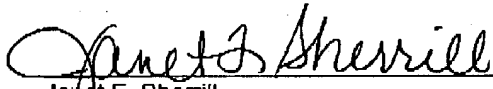


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I hereby certify that this paper is being facsimile transmitted to the U. S. Patent and Trademark Office at Fax No. (703) 872-9306 on the date shown below.


Janet F. Sherrill

September 24, 2004
Date